HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.17396 of 1997

Date: 14-03-2007.

Between :

JC-215111Y N/Sub Gurucharan Singh.

.....Petitioner

And

Union of India, rep. by its Secretary for Defence & others.

.....Respondents.

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.17396 of 1997

ORDER :

This writ petition is filed seeking the following relief :

"To issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of a writ declaring the order of the respondents in issuing Proc.No.1523/CA-2(MP)/04/64 dt.26-4-97 which was amended by Proc.No.1508/CA-2(MP)/Amdt/45 dt.14-6-97 advancing the date of discharge of the petitioner from 30-9-97 to 30-7-97 and the action of the respondents in not referring the petitioner before a Review Medical Board for consideration of upgradation of the petitioner Medical category in accordance with the rules and action of the respondents in not implementing the orders of the Government sanctioning the 100% substantive quota for all ranks of JCOs/NCOs promoted to Paid Acting ranks on or after 1-4-94 which resulted in denial of substantive promotion to the petitioner to the rank of Subedar wef 1-6-94 as illegal, arbitrary, violative of Art.14 of the Constitution of India and in contravention of Government orders and direct the respondents to continue the petitioner in the rank of Naib Subedar till 30-9-97 and to direct the respondents to refer the petitioner before a Review Medical Board for consideration of the upgradation of the petitioner's Medical category and also to promote the petitioner to the substantive rank of Subedar wef 1-6-94 and to

grant all consequential benefits and to pass such other orders as are necessary in the interests of justice."

The facts to the extent they are relevant for the purpose of this case are that the petitioner, who joined the Army as a Sepoy in the clerical trade, was, in a course of time, promoted to the rank of Naib Subedar on 01.10.1991 and later he got promoted to the rank of Subedar Paid Acting on 01.06.1994. The Government of India, vide its letter dated 10.11.1994, sanctioned revision of substantive ranks in the regular Army with effect from 01.04.1994 and based on the said sanction, the Army Headquarters issued proceedings on 31.03.1995 and 19.04.1995 to all concerned for implementing the sanction given by Government of India. The petitioner, in the affidavit filed in support of this writ petition, averred that in pursuance of the said proceedings, the petitioner, who was holding the rank of Subedar Paid Acting, was entitled to be promoted to the substantive rank of Subedar with effect from the date of promotion to the Acting Paid rank; that by virtue of the said proceedings, he is entitled to an automatic promotion to the substantive rank of Subedar with effect from 01.06.1994; that the respondents 5 to 7 who maintain the records of EME Personnel, did not implement the instructions issued by Army Head Quarters. The petitioner further averred that he went into

depression and was admitted in Military Hospital on 16.03.1995 and that after treatment, he was discharged on 02.05.1995; that he was granted Sick leave/Annual leave of eight weeks from the date of his discharge from the hospital and he reported back to duty on 27.06.1995. Thereafter, he reported to Military Hospital, Secunderabad on 28.06.1995 and he was subjected to Medical Board, which downgraded his category to CEE (Temp) for six months from 31.07.1995. After a review, his category was upgraded to BEE (Temp) with effect from 31.01.1996. Later, with effect from 31.01.1997, the petitioner was categorized as BEE (Permanent).

On 24.01.1996, the respondents issued proceedings No.089/96 to the effect that the petitioner automatically relinquished Paid Acting Rank of Subedar with effect from 16.05.1995; the petitioner was later subjected to a Medical Board and the said Medical Board categorized the petitioner in BEE (Psy) permanent with effect from 31.01.1997. Eventually, the petitioner's representations for implementing the Government orders for grant of promotion to the Substantive rank of Subedar with effect from 01.06.1994 were not considered. It was decided to retire him with effect from 30.09.1997 vide proceedings dated 11.10.1996. Subsequently, the proceedings were amended vide proceedings dated 26.04.1997, advancing the date of discharge from

30.09.1997 to 30.07.1997. Thereafter, the respondents, after deciding to discharge the petitioner, issued a show cause notice on 06.06.1997 calling upon to show cause as to why he should not be discharged from service with effect from 31.07.1997. The petitioner gave a reply on 09.06.1996. The petitioner was discharged vide proceedings dated 14.06.1997, signed by one B.Mishra, Major, Senior Records Officers for OIC Records, wherein the proceedings dated 26/30 April 1997 were amended by treating the date of discharge as 30th July 1997 for 31st July 1997. Aggrieved by these proceedings, the petitioner filed the present writ petition.

A counter affidavit has been filed on behalf of respondents 1 to 7 and I will advert to the relevant portions of this counter affidavit a little later.

Heard Sri S.Krishna, learned counsel for petitioner and Sri B.Narayana Reddy, learned Standing Counsel for Central Government, representing respondents 1 to 7.

Sri Krishna submitted that though the Government of India issued a policy directive on 21st of November 1994 and necessary instructions following the same were issued on 31st of March 1995 by the competent officer, the substantive promotion to the post of Subedar was delayed and the petitioner fell sick in March 1995. He

further contended that since the promotion declared by the Government of India and endorsed by the Army authorities being 100% substantive quota, all the Paid Acting Subedars were deemed to have been promoted as Subedars and therefore, the question of making the petitioner relinquish his promotion, does not arise. Sri Krishna further submitted that but for the petitioner's reversion to the post of Naib Subedar he would not have been discharged since admittedly a person cannot continue in the post of Naib Subedar for more than 24 years or on completing the age of 50 years, whichever is earlier. He therefore, submitted that the order of relinquishment and discharge are liable to be declared as illegal.

Sri B.Narayana Reddy, learned Standing Counsel submitted that the orders of relinquishment and that of discharge do not call for any interference as they were passed strictly in consonance with the earlier regulations/instructions covering the petitioner.

As regards the 1st submission of Sri Krishna, it is true that on the basis of the Government of India policy directive issued on 21st of November 1994, promotions of JCOs/NCOs to the extent of 100% substantive quota, were declared. In the counter affidavit it is stated that the Army Headquarters vide letter dated 17th of April 1995,

allotted 3496 numbers of revised quota of Substantive Subedar to the Corps of EME against effective strength of Paid Acting Subedar of 3938 as on 31st of March 1995. Therefore, EME records, vide letter dated 4th May 1995 (Annexure R-4), had sought a clarification from Army Headquarters before implementation, as the rank and file of substantive quota as intimated by the Army Headquarters vide letter differs from actual authorization of rank and file of the Corps of EME and in turn, Army Headquarters have clarified vide their letter dated 24th May 1995 (Annexure R-5) that the revised quota of substantive promotion has been allocated based on the authorization of rank and file during October 1993. It is therefore, maintained that the petitioner was not entitled for automatic promotion to the rank of Substantive Subedar with effect from 01.06.1994 as claimed by him, because the revised quota was not adequate for effective authorized strength of the rank of Subedar. It is further stated that Paid Acting Subedar Clerks, to which rank the petitioner belonged, promoted on 1st of June 1994 were considered for promotion to the rank of Substantive Subedar with effect from 1st of December 1995 as per their seniority. Since the petitioner has relinquished his Paid Acting rank of Subedar due to hospitalization on 16th of May 1995, he was not considered for promotion to

the rank of Substantive Subedar.

The petitioner has not filed any reply affidavit controverting these statements of fact mentioned in the counter affidavit. In the absence of any contra material produced by the petitioner, I have no reason to doubt the correctness of the statement made by the respondents in the counter affidavit that the promotions to the category of Subedars could not be immediately effected in view of the various administrative reasons that were given in the counter affidavit and that all the persons who were holding the rank of Paid Acting Subedar Clerks as the petitioner, were promoted only with effect from 1st of December 1995. The first contention of the petitioner, therefore, fails.

As regards the order of relinquishment of promotion to the post of Subedar, it is stated in the counter affidavit that since the petitioner was admitted in the hospital on 16th of March 1995 and discharged from the hospital on 2nd of May 1995, the Paid Acting rank of Subedar was relinquished with effect from 16th of May 1995 due to his hospitalization for more than two months in terms of Para 2(g) of AI 84/68 (Annexure R-1). I have perused Annexure R-1, which reads as under :

> "**2 (g). Absence due to sickness.**
>
> (i) JCOs/OR, who are injured of fall sick not due to their own fault while serving in peace areas and are admitted to military or recognized civil hospital while

on duty, will be treated as on duty vide Rule 61 (a) of Leave Rules for the services, Vol I-Army. They will retain their paid acting ranks or paid lance appointments for a maximum period of two months. The period of two months will include any period of sick leave granted on discharges from hospital on the recommendation of the Competent medical authority under Rule 61(b) ibid which is covered by their entitlement of annual/accumulated annual leave for the current year. Acting promotion/lence appointments in their place will be permissible from the 29th day of their admission to hospital."

From the afore-mentioned extract it is clear that as the petitioner's hospitalization got prolonged beyond two months stipulated period, his promotion got automatically relinquished. Indeed, the petitioner, questioning the decision of relinquishment of his promotion, filed an appeal to the appellate authority. The appellate authority, on consideration of the said appeal, communicated an order on 25th of June 1997, which reads as under :

"1. Refer your petition dated 06 Jun 97 requesting forholding of early/premature re-categorisation medical board.

2. Your application dated 06 Jun 97 for holding an early/premature re-categorisation medical board was forwarded to DDMS HQ ATNKK & G Area vide our letter No.1159/LA (Mil Est) dated 07 Jun 97 alongwith the recommendations of CO EME Records. The case was received back vide HQ ATNKK & G Area letter No.782/8/M-5(A) dated 12 Jun 97 with observations (the letter has already been read by you). Consequent to the

observations by HQ ATNKK & G Area on your request, your case was taken up with MH Secunderabad vide our letter No.1159/LA (Mil Est) dated 18 Jun 97. The case has been received back from MH Secunderabad vide their letter No.MB/400/7/CAT/97 dated 20 Jun 97 stating that the JCO has already undergone release medical board and the same has been approved and that no fresh medical board can be held for the disability noted in his release medical board as per existing orders.

3. We had also requested MH Secunderabad to consider your case on humanitarian grounds to which MH Secunderabad has clarified that no medical board can be held on humanitarian grounds.

4. In view of the above, the OIC Records has directed that you will proceed on discharge as already sanctioned."

Sri Krishna, learned counsel for petitioner submitted that this order was not challenged and the decision declaring that the petitioner has relinquished his promotion, has thus become final. Having not questioned the legality and correctness of the decision of the authorities in declaring that the petitioner has relinquished his promotion, it is not open for the petitioner to raise the said contention in this writ petition. The 2nd contention accordingly fails.

Then remains the issue relating to discharge of the petitioner. It is not disputed by the learned counsel for

petitioner that according to the relevant regulation governing the service which the petitioner was holding, a person cannot continue in the office of Naib Subedar for more than 24 years or on completing the age of 50 years, whichever is earlier. Admittedly the petitioner has stayed in the office for more than 24 years, which rendered him liable for discharge from service and accordingly, the discharge order was made. Therefore, there is no illegality in the order of discharge.

For the aforementioned reasons, I do not see any reason to interfere with the orders passed by the respondents. Writ petition is accordingly dismissed. No costs.

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C.V.NAGARJUNA REDDY, J

14th March 2007.

ajr